

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and
ROSLYN WOODARD SMITH,
Individually and as Administrators of
The ESTATE OF HARRY SMITH, III,

Plaintiffs,

v.

CIVIL ACTION NO. 04-1254-GMS

CITY OF WILMINGTON,

JOHN CIRITELLA, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

THOMAS DEMPSEY, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

and

MATHEW KURTEN, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

Defendants.

**PLAINTIFFS' MOTION IN LIMINE
TO EXCLUDE 402 AND 403 EVIDENCE**

Come now the Plaintiffs, by counsel, and respectfully request the Court exclude at trial the introduction of any and all 402 and 403 evidence, relating in any way to allegations Harry Smith, III had a scalpel, attempted to carjack a vehicle, and/or had possession of a gun of any type.

The basis for this motion is that the jury will be asked to determine whether or not the defendants used excessive force during the arrest of Harry Smith, III. The law requires the jury focus on what a reasonable officer would have done given what he knew at the time he used deadly force.

There is no evidence, of which plaintiffs are aware, indicating the defendants, at the time they participated in the car chase and used deadly force, had information indicating Harry Smith, III took a scalpel from the hospital emergency room, allegedly attempted to carjack a vehicle on Washington Street, or possessed a gun of any type.

The introduction of any of this kind of evidence is prohibited by 402 and 403 because it is irrelevant and will serve only to confuse or mislead the jury. Its prejudicial impact clearly outweighs its probative value.

Dated this 25th day of September 2006.

s/Anne T. Sulton
Sulton Law Offices
Post Office Box 2763
Olympia, WA 98507
(609) 468-6029
annesulton@comcast.net

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2006, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF which will send notification of such filing(s) to:

Attorney John A. Parkins, Jr. at Parkins@rlf.com
Richards, Layton & Finger, P.A.
Post Office Box 551
Wilmington, DE 19899

s/Anne T. Sulton